

Court of King's Bench of Alberta

Citation: Piikani Nation v North Peigan, 2025 ABKB 508

Date: 20250903
Docket: 2201 01622
Registry: Calgary

Between:

Piikani Nation and Piikani Nation Chief and Council

Applicants

-and-

**Dianna North Peigan, Rod North Peigan, Rick Yellow Horn, Lynol Smith, Terry North Peigan,
Willard Yellow Face, Calvin Bastien, Glenda Pard and Vanessa One Owl**

Respondents

**Reasons for Case Management Decision
of the
Honourable Justice M.A. Marion**

I. Introduction

[1] This action is part of a larger set of actions under my case management (**Case Managed Actions**)¹ which, since December 2024, have been under my management as case management justice (**CMJ**).

[2] Pursuant to an endorsement² I issued on March 10, 2025, persons seeking to file applications in the Case Managed Actions are required to follow a process (**Fiat Process**) by which they require my permission (by way of a request (**Fiat Request**) for a fiat (**Fiat**)) before they may bring an application in the Case Managed Actions. I explained the Fiat Process, the historical use of fiat processes in the Case Managed Actions, and the framework for considering Fiat Requests, in *Piikani Nation v McMullen*, 2025 ABKB 481 [**2025 ABKB 481**] at paras 8-16.

[3] These reasons address a Fiat Request of Liliana Kostic (**Kostic**) by which she seeks to advance claims against Gowling WLG, a Gowling lawyer Caireen Hanert (**Hanert**)³, Jane Doe and certain unspecified “others”. She seeks to do that, arguably in several alternative ways: first, by participating in

¹ As defined in Endorsement #4.

² Endorsement #4.

³ I sometimes refer to Gowling WLG and Hanert collectively as “**Gowlings**”.

a claims process set out in my July 18, 2025 Endorsement #12 relating to alleged damages or losses with respect to the granting of an interim injunction (**Interim Injunction**) in this action (**2201 Action**); second, through some other similar summary claim process; third, by allowing her to file her proposed statement of claim (**Proposed Claim**) in the 2201 Action; or fourth, by allowing her to file the Proposed Claim as a new action.

[4] For the reasons set out below, Kostic's Fiat Request as presented is denied.

II. Background

[5] On February 8, 2022, Piikani Nation filed an *ex parte* application for an injunction against certain respondents (**2201 Respondents**) in the 2201 Action. Piikani Nation claimed that some or all of the 2201 Respondents purported to run an unauthorized election to replace the Piikani Nation Chief and Council (**Council**) and purported to have been acclaimed as the new Council entitled to govern Piikani Nation.

[6] On February 8, 2022, Justice Poelman granted the Interim Injunction against the 2201 Respondents until February 24, 2022, at which time the injunction application was to be heard on notice. On February 11, 2022, Justice Poelman varied the terms of the Interim Injunction.

[7] On February 15, 2022, the 2201 Respondents filed an application to set aside and strike the Interim Injunction. This application added Kostic, the Gowling firm and Hanert as co-respondents or respondents.

[8] On February 23, 2022, ACJ Rooke granted several orders, including one that struck Kostic, the Gowling firm and Hanert as respondents. ACJ Rooke also appointed himself as CMJ of the 2201 Action.

[9] On February 24, 2022, when the injunction application was returned in civil chambers, Justice Sidnell did not address the originating application for an injunction on its merits. She adjourned it and continued the Interim Injunction in the meantime.

[10] Although there were other steps taken in relation to the 2201 Action, neither the originating application, nor the application to set aside the Interim Injunction were ever heard by the Court. In the result, the Interim Injunction remained in place for over 3 years but was never heard on the merits involving all parties.

[11] On May 8, 2025, in the context of the Case Managed Actions, Kostic wrote to me expressing her intention to commence a defamation action and I put that on the agenda for the case management conference (**CMC**) in the 2201 Action. Later, in Endorsement #8, I stated:

I have reviewed ACJ Rooke's February 23, 2022 order in the 2201 Action in which Ms. Hanert, Gowling WLG LLP and Ms. Kostic were struck as respondents in the 2201 Action. Based on my current understanding of the 2201 Action, Ms. Kostic is not involved in it or a party to it. Therefore, I am not going to wait for the CMC in the 2201 Action to address Ms. Kostic's request related to her proposed defamation claim. In order for me to understand how or whether it might fit within the Case Managed Actions, I need to see the claim to which Ms. Kostic refers. If this is something Ms. Kostic wishes to pursue, she is directed to provide a Fiat Request with her proposed form of statement of

claim **by June 27, 2025**, with a copy to the proposed defendants. She is, of course, permitted to provide it earlier.

[12] Kostic did not comply with my direction.

[13] On June 27, 2025, at the CMC for the 2201 Action, I directed Kostic to provide her Fiat Request by July 10, 2025, failing which she would be deemed not to be pursuing it.

[14] Also at this CMC, with the agreement or non-objection of everyone present, I vacated the Interim Injunction.⁴ I also provided that the 2201 Respondents who were not present at the CMC could apply to address the vacating of the Interim Injunction (none did so). I further provided for a process by which the 2201 Respondents could advance claims against Piikani Nation for damages or losses with respect to the granting of the Injunction (**Injunction Claim Process**).⁵

[15] After a further extension, Kostic eventually provided me her Fiat Request on July 14, 2025.

III. Positions of the Parties

[16] Kostic’s request for relief is somewhat multi-faceted and difficult to follow.

[17] In summary, she seeks to participate in the Injunction Claim Process, or to be afforded a right to make a claim through a summary process similar to the Injunction Claim Process, failing which she wishes to commence the Proposed Claim in the 2201 Action or as a new action.

[18] Kostic asserts that she is an affected party even though not being named in the 2201 Action. She asserts that Gowlings and Piikani Nation have “engaged in a sustained campaign of false, malicious, and defamatory statements”, including in relation to the 2201 Action and the obtaining of the Interim Injunction. She asserts that Gowlings’ conduct caused her reputational damages, prejudice and harm. Kostic argues that Hanert was her counsel and that ACJ Rooke had previously held that Kostic does not require permission to file a claim against her legal counsel.

[19] As noted above, the Proposed Claim is against Gowlings, Jane Doe, and unspecified “others”. It appears to assert many claims, including defamation, malicious falsehood, malicious conduct, conspiracy, breach of fiduciary duty, abuse of court process, litigation misconduct, negligence, unlawful invasions of privacy (including “false light invasion of privacy”), misappropriation of confidential information, breach of contract, breach of statutory duty, “resource wastage” and financial misappropriation, among others.

[20] Kostic claims an amount not less than \$25 million in damages, at least \$1 million in aggravated damages, and at least \$2.5 million in punitive damages, together with interim, interlocutory and injunctive relief. She also seeks an order requiring the defendants to retract “all false statements publicly”, issue a formal apology, and indemnify and save her harmless. There is also claimed relief for “full disclosure and restitution of misappropriated trust funds”, an accounting of missing assets, a “forensic accounting and full disclosure of illegal activities”, the return of confidential information, and declaring the Interim Injunction null and void, among other things.

⁴ See Endorsement #12.

⁵ Endorsement #12, para 6.

[21] The Proposed Claim is 55 pages: 150 paragraphs with attached schedules. It is excessively repetitive, disorganized, argumentative, conclusory and confusing. It is a shot-gun blast of many asserted wrongs over a two-decade history.

[22] In support of her request, Kostic provided a proposed 12-page affidavit, however, the affidavit did not include any of the referenced exhibits.

[23] As against the only expressly named parties, Gowlings, the core of Kostic's claims appear to relate to Gowlings involvement in the 2201 Action and the obtaining of the *ex parte* Interim Injunction, *but also* Hanert's involvement, since about 2008, in matters related to the facts at issue in the 0601 Action, or other Case Managed Actions. For example, Kostic's materials appear to assert wrongdoing against Gowlings for, among other things:

- (a) continuing to disseminate and publish the false claim that Kostic attempted to defraud Piikani Nation of over \$22 million;
- (b) claiming Kostic paid bribes and engaged in criminal conduct;
- (c) asserting Kostic is a Russian spy, affiliated with Hells Angels, contemptuous, corrupt and responsible for ongoing litigation she allegedly orchestrated;
- (d) engaging in illegal searches and seizures and unauthorized access, copying and dissemination of privileged legal and personal documents belonging to Kostic or others; and
- (e) lying to the RCMP, the Law Society, and the Court.

[24] Gowlings objects to Kostic's Fiat Request. Their position is that the request is improper and an abuse of process, because it does not comply with the Fiat Process, Gowlings was not served with the Fiat Request, the Fiat Request does not plead facts to permit a defence to be made, and it does not disclose a viable cause of action against Gowlings that is not precluded by limitations legislation or is already present in other pleadings in other matters. Gowlings disputes that Hanert was ever Kostic's counsel.

IV. Issues

[25] The issues addressed in these Reasons are:

- (a) Should Kostic's Fiat Request be rejected for non-compliance with the Fiat Process?
- (b) Should Kostic be allowed to participate in the Injunction Claim Process or a similar summary process for the Proposed Claim?
- (c) Should Kostic be granted leave to file the Proposed Claim in the 2201 Action?
- (d) Should Kostic be granted leave to file the Proposed Claim as a new action?
- (e) What is an appropriate order or direction?

V. Analysis

A. Should Kostic's Fiat Request be rejected for Non-Compliance with the Fiat Process?

[26] Kostic's Fiat Request does not comply with the Fiat Process. It does not include a proposed application. Her proposed affidavit is incomplete and does not include the exhibits. In her Fiat Request, she suggests she will supplement the Fiat Request with later evidence.

[27] Rather than disclosing her proposed plan of action, and seeking permission to pursue a proposed application to implement that plan of action, the Fiat Request arguably seeks the Court's advice on what Fiat Request she should seek, or a preliminary opinion about her Proposed Claim and how she should advance it. The Court is not Kostic's legal counsel and cannot provide her legal advice on how she should proceed to advance claims.

[28] As I noted in *2025 ABKB 481* at para 51, it is "up to parties seeking a Fiat to provide a useful proposed evidentiary basis for their Proposed Application, failing which the Fiat Request may not be successful".

[29] The Fiat Request is non-compliant with the Fiat Process and is rejected for that reason alone. However, in case I am wrong in that conclusion, and for efficiency's sake, I will address the Fiat Request on its merits.

B. Should Kostic be Allowed to Participate in the Injunction Claim Process or a Similar Summary Process for the Proposed Claim?

[30] The Injunction Claim Process was ordered to address assertions by some of the 2201 Respondents that they suffered damage or loss as a result of the Interim Injunction. It is not clear to me whether the usual undertaking as to damages was expressly or implicitly provided by Piikani Nation when it obtained the Interim Injunction, and/or whether it was implied in the Court's order. In Robert J Sharpe, *Injunctions and Specific Performance*, Looseleaf ed (Toronto, Ont: Thomson Reuters Canada, 2021) at §2:13, the author states: "The English courts have held that the undertaking in damages is implicit and will be enforced even if not included in the order unless the contrary was argued and expressed at the time", citing, among others, *Smithkline Beecham PLC v Apotex Europe Ltd*, [2006] 1 WLR 872 (Ch D). Whether there is an enforceable undertaking as to damages will likely be addressed in the Injunction Claim Process if any of the 2201 Respondents make a claim in that process.

[31] But Kostic is not a party to the 2201 Action. She was only briefly named as a respondent by the 2201 Respondents, not Gowlings or Piikani Nation, before being struck as a respondent by ACJ Rooke eight days later. In February 2022, ACJ Rooke confirmed that Kostic had no standing in the 2201 Action.

[32] Kostic cannot reasonably blame or claim against Gowlings or Piikani Nation for being named briefly as a party to the 2201 Action. In any event, Kostic has not explained with any particulars how simply being a named respondent party for eight days, at the behest of the 2201 Respondents, while she was not specifically named in the Interim Injunction, possibly caused her any damages or losses.

[33] On its terms, the Interim Injunction as granted on February 8, 2022 (and varied on February 11, 2022), applied to the 2201 Respondents as well as “any party acting on behalf of or in concert with the [2201 Respondents], or any other person with notice of this Order”, from:

- (a) interfering with the business and operations of Piikani Nation;
- (b) organizing, preparing for, holding, or taking any further steps toward holding any election for or appointment of leadership positions for Piikani Nation or any referendum;
- (c) declaring certain “Unauthorized Nominees” as being acclaimed as new leadership of Piikani Nation;
- (d) representing that the Unauthorized Nominees are new leadership of Piikani Nation and/or holding themselves out to be the properly and legally elected new leadership of Piikani Nation;
- (e) taking any actions in the name of Piikani Nation, Piikani Nation Chief and Council or leadership of Piikani Nation, whether elected or appointed;
- (f) using resources, monies or materials of Piikani Nation for the purposes of preparing for or holding or taking any further steps toward any election for or appointment of the leadership positions of Piikani Nation;
- (g) communicating with the public or any third parties, including but not limited to media, government agencies, Piikani Nation business partners, Piikani Nation business entities, or financial institutions, of any purported election for or appointment of leadership positions of Piikani Nation and/or any outcome of any such election or appointment, or under the name of Piikani Nation and/or as Chief Electoral Officer or a duly elected Chief or Councillor or leader;
- (h) entering or attending at any public building owned or operated by Piikani Nation or Piikani Nation-owned entities unless they have legitimate business justifying their presence that does not contravene the order;
- (i) trespassing on Piikani Nation property; and
- (j) interfering with, discouraging, hindering or impeding in any way persons authorized by the applicants from accessing Piikani Nation property.

[34] Much of Kostic’s proposed affidavit relates to factual events that pre-date the Interim Injunction. Such events do not relate to the conduct, transaction or events described in the originating application in the 2201 Action. They have no place in the 2201 Action, which relates to Piikani Nation elections and governance in 2021/2022. Earlier events could not ever reasonably be said to be loss or damage from the later-obtained Interim Injunction.

[35] The proposed evidence Kostic offers about the 2201 Action is her assertion that Hanert obtained the Interim Injunction “attempting to discredit me” and that the orders were “unlawfully obtained and misused to justify ongoing defamatory publications aimed at silencing me and damaging my reputation further”. I have reviewed the affidavits filed in support of the Interim Injunction. As noted, they relate

to elections and governance of Piikani Nation. There are no assertions made against Kostic. Kostic's bald assertions about why the Interim Injunction was obtained are speculative and not supported by the record or Kostic's proposed record.

[36] Further, Kostic's proposed evidence does not provide cogent evidence of how the Interim Injunction, on its terms, ever applied to enjoin her personally.

[37] For these reasons, I am not satisfied it is appropriate for Kostic to participate in the Injunction Claim Process.

[38] I am also not satisfied it is appropriate for the Court, or within the Court's power or jurisdiction, to impose a bespoke summary litigation process for Kostic to advance her wide-ranging claim against Gowlings, which in some respects dates back to events in 2008. The Proposed Claim, if permitted, would have to follow the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*) for the filing of commencement documents and conduct of civil litigation.

C. Should Kostic be Granted Permission to File the Proposed Claim in the 2201 Action?

[39] I do not grant Kostic permission to file the Proposed Claim in the 2201 Action. That request is not appropriate and is hopeless, including at least for these reasons:

- (a) the parties to the Proposed Claim are completely different than the parties in the 2201 Action. Neither Kostic, as proposed plaintiff, nor Gowlings, as the only clearly named proposed defendants, are parties to the 2201 Action. A new commencement document cannot simply be superimposed on or shoe-horned into an existing action by a non-party in this manner;
- (b) ACJ Rooke has already held that Kostic does not have standing in the 2201 Action. Kostic cannot personally advance the positions or claims the 2201 Respondents may have in relation to the 2201 Action;
- (c) there is no indication as to whether the parties to the 2201 Action have consented to the Proposed Claim being added to the 2201 Action;
- (d) the 2201 Action was commenced by originating application, which contemplates a summary process. The claims in the Proposed Claim would require a statement of claim and discovery process, if they are permitted to proceed;
- (e) as noted, the core substantive relief in the 2201 Action was granted on an interim basis through the Interim Injunction, and then vacated with consent of Piikani Nation. Only the Injunction Claim Process, and possibly costs, remain to be determined. The Proposed Claim would completely overwhelm and delay the remaining steps in the 2201 Action; and
- (f) the alleged facts underlying the Proposed Claim only partly overlap with the facts pertaining to the 2201 Action. As noted, the Proposed Claim seeks to go back to events taking place starting in approximately 2008.

[40] Kostic is not given permission to file the Proposed Claim in the 2201 Action.

D. Should Kostic be Granted Leave to File the Proposed Claim as a New Action?

[41] As noted by ACJ Rooke in *Rana v Baker*, 2021 ABQB 1028 at paras 13-14:

[13] An application or statement of claim sets the issues to which the opposing party must respond, and alerts that party of the case it must meet: *Whiten v Pilot Insurance Co*, 2002 SCC 18 at para 87. Proper pleadings require more than simply bare assertions, or “bald allegations” of wrongdoing: *GH v Alcock*, 2013 ABCA 24 at para 58; *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras 16-20. Pleadings must provide a basis for the Court and other litigants to make a meaningful response, and indicate to the responding parties the “... who, when, where, how and what gave rise to its liability.”: *Mancuso v Canada (National Health and Welfare)* at para 19.

[14] Mr. Rana cannot file inadequate pleadings and then either supplement those claims, or expect the Defendants to “fill in the blanks”: *Mancuso v Canada (National Health and Welfare)* at para 20. A lack of specificity is not merely a technical defect, but goes to the core of the claim: *GH v Alcock* at para 58, citing *AL v Ontario (Minister of Community and Social Services)* (2006), 2006 CanLII 39297 (ON CA), 274 DLR (4th) 431, 218 OAC 150 (Ont CA). Inadequate pleadings abuse the court’s process because a respondent cannot defend against unclear and non-specific claims and the court cannot control the proceedings, identify the proposed argument, or make findings on the relevant facts: *Unrau v National Dental Examining Board*, 2019 ABQB 283 at para 629 [*Unrau #2*].

[42] See also *Sharifi-Zanjani v MacEwan University*, 2019 ABQB 845 [*Sharifi-Zanjani #1*] at para 19:

[19] Courts and parties have no duty or responsibility to respond to an action where the facts and issues are not identifiable or discernable: *kisikawpimootewin v Canada*, 2004 FC 1426 at paras 8-9 (*kisikawpimootewin*). If an action does not give a defendant an adequate basis on which the defendant can respond, this is a reason to conclude the proceeding is vexatious and an abuse of the court’s processes: *GH v Alcock*, 2013 ABCA 24 at para 58; *kisikawpimootewin* at para 9. Mr. Sharifi-Zanjani’s claim makes bald allegations against MacEwan University. It is impossible to see how MacEwan University could respond to the allegations in the Statement of Claim.

[43] Kostic is not granted leave to file the Proposed Claim as a new action, for several reasons.

[44] First, the Proposed Claim is unclear about its intended defendants. It only expressly names Gowlings as defendants, but also includes in the style of cause “Jane Doe” and “others” without providing sufficient factual allegations about Jane Doe or the “others”. At the same time, her materials frequently reference alleged conduct of Piikani Nation, or others including “CIBC et al” and the Attorney General of Canada. This is not a proper pleading. For the purposes of the rest of my analysis, I focus on Gowlings as the only named target of the Proposed Claim.

[45] Second, the claims against Gowlings are wide ranging, amorphous, and largely based on conclusory assertions without reasonable or sufficient particulars. For example, the Proposed Claim fails to provide any or sufficient particulars of Gowlings’ conduct to support claims against Gowlings for malicious falsehood, conspiracy, breach of fiduciary duty, negligence, negligent misrepresentation, vicarious liability, unlawful invasions of privacy, misappropriation of confidential information, breach of contract or breach of statutory duty. It also alleges claims not known in law, such as “resource wastage”.

[46] In 2023, the Federal Court struck a claim by Kostic against Gowlings, among others, at least in part because it failed to properly identify defendants, failed to plead the elements of causes of action, and made scandalous “unsubstantiated allegations of conspiracy, fraud and misconduct, derogatory allegations and inflammatory language against numerous Defendants, such as the Piikani Defendants and the various lawyers and law firms”, in a pleading found to be “a rambling and fragmented narrative of facts, random elements or assorted legal concepts, and bare conclusions cobbled together in a disjointed manner”: *Kostic v Canada et al*, (September 6, 2023), Federal Court Docket T-680-20 (Aylen J).⁶ This description equally applies to the Proposed Claim.

[47] Third, Kostic often described her proposed claim as a defamation claim.

[48] The test for defamation requires the plaintiff to prove: (1) that the impugned words were defamatory in the sense that they would tend to lower the plaintiff’s reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff: *Defamation Act*, RSA 2000 c D-7; *Giesbrecht v Prpick*, 2025 ABCA 222 at para 10, citing *Grant v Torstar Corp*, 2009 SCC 61 at para 28.

[49] Specificity in pleadings is particularly important in defamation actions: *Arcelormittal Tubular Products Roman SA, (Mittal Steel Roman SA) v Canadian Natural Resources Limited*, 2013 ABQB 578 at para 25. The Proposed Claim does not coherently plead the particulars of Gowlings’ alleged defamation as required by rule 13.7(f). The Proposed Claim fails to provide *what* exactly Gowlings published, *how* it was published, or *where* it was published: *Sharifi-Zanjani #1* at para 18; *Sharifi-Zanjani v MacEwan University*, 2019 ABQB 936; *Jordan v De Wet*, 2024 ABKB 462 at para 79, citing *Arcelormittal Tubular Products* at para 25.

[50] Although it is not entirely clear due to the lack of particulars, it appears that many, if not all, of the alleged defamation claims against Gowlings relate to statements that were likely made in the context of one of more of the Case Managed Actions. Statements made in court or during a formal step in litigation lie at the core of what is protected by absolute privilege: *Tuharsky v O’Chiese First Nation*, 2025 ABCA 267 at para 26; *Kostic v Piikani Nation*, 2024 ABKB 671 at 148. Statements made in pleadings or by counsel during oral submissions are protected, as are other communications made within a “step” of the judicial process that has been recognized as affording absolute privilege: *Tuharsky* at para 26.

[51] It is not possible to parse from the Proposed Claim which alleged defamatory statements Gowlings made, if any, that could reasonably fall outside absolute privilege. The specific and particularized alleged defamatory statements referenced in the Proposed Claim, including as attached in

⁶ This matter was summarized in *Canada (Attorney General) v Kostic*, 2025 FC 621 at paras 64-67.

Schedules A and B to the Proposed Claim, are social media posts (alleged to be repeated by Piikani Nation), which, on their face, were not published by Gowlings.

[52] There is also reference to certain publications of Piikani Nation (for example, in the form of community updates) related to the Interim Injunction or other Case Managed Actions which Kostic asserts were prepared by Gowlings. However, even if Gowlings authored documents at the request of Piikani Nation (which is a matter of speculation on the record before me), that does not mean Gowlings, in law, “published” them for defamation purposes. On their face, these are Piikani Nation publications. Communications between solicitors and clients in the context of a confidential solicitor-client relationship are not likely considered publications for the purpose of defamation: *Grimmer v Carleton Road Industries Association*, 2009 NSSC 169; *Motoretta v Twist & Go Power Sports*, 2014 ONSC 2469 at paras 57-58; *Hedary Hamilton PC v Dil Muhammad, et al*, 2013 ONSC 4938 at para 47. Kostic has not provided me any authority to suggest that legal counsel “publishes” documents for defamation purposes when it prepares a document at the request of the client, sends it to the client, and then the client in turn publishes the contents under its own name.

[53] Fourth, the Proposed Claim against Gowlings appears to primarily be a thinly veiled attempt to make allegations against Piikani Nation, which conduct is then attributed to Gowlings. For example, although Piikani Nation is not a named party in the Proposed Claim, Kostic’s Fiat Request states that “the Defendants, including Piikani Nation and [Hanert], have engaged in a sustained campaign of false, malicious and defamatory statements”. Kostic appears to ignore the strong presumption that lawyers act as agents of their clients (not the other way around): *2025 ABKB 481* at para 97; *Hazelwood v Schlotter*, 2022 ABKB 739 at para 54.

[54] Fifth, the Proposed Claim is, in effect, an action against one of the lawyers of her adversary, Piikani Nation, while her disputes with Piikani Nation trundle on. Actions commenced against opposing counsel have routinely been found to be an abuse of process because: “(1) allowing such actions puts the law firm and the firm’s client in an untenable position of having to waive solicitor-client privilege in order to defend against the claims; and (2) allowing such actions to proceed would lead to the “endless relitigation of disputes” as each action would spawn new actions against opposing counsel”: *RICHARD SMICKLAS v HOME TRUST COMPANY AND GOWLING WLG*, 2025 ONSC 4346 at para 23, citing *Hedary Hamilton* at paras 20-23; *Ahsan v Minden Gross LLP*, 2024 ONSC 1307 at para 6. Many of the types of claims made against Gowlings in the Proposed Claim were made and rejected as against legal counsel in *Hedary Hamilton*.

[55] The Proposed Claim against Gowlings appears to me to be an attempt to enmesh Gowlings in a dispute, quite possibly for tactical reasons (although I need not make a finding in that regard). A similar approach by Mr. McMullen against Hanert in Federal Court proceedings was dismissed as improper: *McMullen v Piikani First Nation*, 2023 FC 1531 at paras 51-54.

[56] Further, I note that Kostic was recently declared a vexatious litigant by the Federal Court, under section 40 of the *Federal Courts Act*, RSC 1985, c F-7: *Canada (Attorney General) v Kostic*, 2025 FC 621 at para 89.⁷ In that decision, the Court specifically referenced some of Kostic’s claims against Hanert, which appear likely to be similar to the claims in the Proposed Claim: *Canada (Attorney General) v Kostic* at paras 40, 46.

⁷ Kostic has not been declared vexatious in Alberta: *Piikani Nation v Kostic*, 2025 ABCA 7 at para 16.

[57] Sixth, the conduct complained of appears to be a repackaging of complaints against Piikani Nation about the decision and reasons to terminate Kostic’s management of Piikani Trust assets, about the prosecution of the 0601 Action (a matter relevant to costs at the conclusion of the 0601 Action), about its conduct in federal court proceedings, or about matters addressed in other Case Managed Actions. Allowing the Proposed Claim would add complexity and expense to, duplicate aspects of, and would likely delay the efficient resolution of, other Case Managed Actions.

[58] Seventh, the Proposed Claim appears to include facts that occurred “over two decades”, some of which would likely be barred by the ultimate limitation period in section 3(1)(b), or the two-year limitation period under section 3(1)(a), of the *Limitations Act*, RSA 2000 c L-12. For example, Kostic’s proposed evidence and attached Schedules to the Proposed Claim illustrate she has been aware of at least some of the alleged defamatory publications since November 2022. In action number 1501-11111, CMJ Graesser noted that Kostic has asserted that her lawyers failed to commence a defamation action against the Piikani Nation and others within the time allowed by the *Limitations Act*: *Kostic v Thom*, 2023 ABKB 642 at para 10.

[59] Eighth, Kostic’s assertion that she is seeking to file a claim against “my legal counsel”, relying on an asserted 2016 order of ACJ Rooke, is of no moment. Hanert disputes that she has ever been Kostic’s counsel. I am not satisfied based on Kostic’s proposed record that Hanert was ever her counsel. In any event, even if Hanert was her counsel as alleged, Kostic’s Proposed Claim does not relate to the period during which Hanert was allegedly her counsel. It relates primarily to the conduct of some of the Case Managed Actions or related matters.

[60] In conclusion, I find that the Proposed Claim against Gowlings is hopeless and would abusively cause delay and expense in the Case Managed Actions. Further, adopting a phrase used by ACJ Rooke in *Piikani Nation v Raymond James Ltd*, 2017 ABQB 140 at para 30, for those claims which could arguably be adequately pleaded against Gowlings, Kostic has not “shown a true, new, viable, cause of action against [Gowlings] that isn’t precluded by limitations legislation, or already present, in substance, in the pleadings to date”.

[61] Accordingly, I do not permit Kostic to file the Proposed Claim.

[62] I wish to clarify this conclusion. In the materials Kostic provided, as noted above, there is evidence of social media posts by certain identified individuals, and publications by Piikani Nation in the form of community updates. My decision not to permit Kostic to file the Proposed Claim against Gowlings or other unnamed parties does not prevent Kostic from filing a properly pleaded defamation claim against Piikani Nation in respect of the publishing of its community updates, or against individuals posting about her on social media. Kostic does not require Court permission to file such claims. However, I make no comment on the merits of any such action, for example whether elements of defamation are made out with respect to any particular publication, or whether the claim may be statute-barred under the *Limitations Act*. It will be up to Kostic to decide whether she wishes to pursue such potential actions, given the potential cost or other risks associated with doing so. Any such action, if filed, would fall outside the Case Managed Actions and would proceed in the normal course under the *Rules* unless later directed to be part of the Case Managed Actions.

E. What is an Appropriate Order or Direction?

[63] As noted above, Kostic Fiat Request is dismissed, with the clarification noted above.

[64] Parties that are substantially successful are presumptively or *prima facie* entitled to costs: **2025 ABKB 481** at para 112; **JWS v CJS**, 2022 ABCA 63 at para 24; **McAllister v Calgary (City)**, 2021 ABCA 25 at para 21.

[65] Gowlings has been successful in opposing Kostic's Fiat Request. Gowlings is *prima facie* entitled to costs. However, I note that Gowlings was self-represented with respect to the Fiat Request.

[66] I direct the following process for determining costs, in the event the parties cannot agree. Within 4 weeks of these Reasons, each party shall provide me and the other parties a written cost submission setting out their costs position. These submissions will be a maximum of 5 pages in letter format, single spaced (excluding authorities, offers, proposed bills of costs, or summaries of proposed reasonable costs actually incurred). Within 6 weeks of these Reasons, each party shall file and serve on the opposing party and submit to my office any response submission to the other parties' cost submission, to a maximum of 3 pages in letter format, single spaced (excluding authorities).

VI. Conclusion

[67] I make the orders and directions noted above.

Dated at the City of Calgary, Alberta this 3rd day of September, 2025.

M.A. Marion
J.C.K.B.A.

Appearances:

Caireen Hanert
for Gowlings

Liliana Kostic
Self-represented Litigant